

Panaji, 19th March, 1973 (Phalguna 28, 1894)

SERIES I No. 50

OFFICIAL GAZETTE

GOVERNMENT OF GOA, DAMAN AND DIU

EXTRAORDINARY

No. 2

GOVERNMENT OF GOA, DAMAN AND DIU

Legislative Assembly of Goa, Daman and Diu

Legislature Department

LA/A/7/579/73

The following Bill which was introduced in the Legislative Assembly of Goa, Daman and Diu on 9th March, 1973, is hereby published for general information in pursuance of the provisions of Rule 127 of the Rules of Procedure and Conduct of Business of the Legislative Assembly.

The Goa, Daman and Diu Sales Tax (Amendment) Bill, 1973

(Bill No. 2 of 1973)

A BILL

further to amend the Goa, Daman and Diu Sales Tax Act, 1964

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Twenty-fourth Year of the Republic of India as follows:

1. Short title, extent and commencement. —

(i) This Act may be called the Goa, Daman and Diu Sales Tax (Amendment) Act, 1973.

(ii) It extends to the whole of the Union territory of Goa, Daman and Diu.

(iii) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section 2. — In section 2 of the Goa, Daman and Diu Sales Tax Act, 1964 (4 of

1964) (hereinafter referred to as the principal Act), —

(1) clause '(a)' shall be renumbered as clause '(aa)' and before clause (aa) so renumbered the following clause '(a)' shall be inserted, namely: —

“(a) ‘business’ includes —

(i) any trade, commerce or manufacture, or any adventure of concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture or concern; and

(ii) any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials, empties, consumable stores, waste products, or such other goods, or waste or scrap of any of them, which is ancillary or incidental to or resulting from such trade, commerce, manufacture, adventure or concern; but does not include any activity in the nature of mere service or profession”;

(2) (i) for clause (b) the following shall be substituted, namely:

“(b) ‘dealer’ means any person who sells, supplies or distributes goods directly or otherwise, in Goa, Daman and Diu in connection with his business; and includes the Government of India, or of any State, or of any Union territory, or a casual trader”;

(ii) in Explanation 3 to clause (b) for the words “who carries on the business of selling goods and who has, in the customary course of business authority to sell goods” the words “who sells goods in connection with the business and who has authority to sell goods” shall be substituted;

(iii) in Explanation 4 to clause (b) for the words “but carries on the business of selling goods” the words “but sells goods in connection with the business” shall be substituted;

(iv) after Explanation 4 to clause (b) the following shall be inserted, namely:—

“Explanation 5.—‘Casual trader’ means a dealer who has, whether as principal, agent, or in any other capacity, occasional transactions involving the selling, supply or distribution of goods in the Union territory of Goa, Daman and Diu”.

(3) for clause (d) the following shall be substituted, namely:—

“(d) ‘goods’ means all kinds of movable property (not being newspapers, actionable claims, stocks, shares, securities or money) and all materials, articles and commodities, including standing trees and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale;”

(4) in clause (f), after the words “any goods” the expression “but does not include such manufactures or manufacturing processes as may be prescribed” shall be added.

(5) for clause (1) the following shall be substituted, namely:—

“(1) ‘sale-price’ means the amount paid or payable to a dealer as consideration for the sale of any goods, excluding any sum allowed as cash discount and/or trade discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof, other than the cost of freight or delivery, the cost of installation, or the cost of insurance for transit, in cases where such cost is separately charged”;

(6) for clause (m) the following shall be substituted, namely:—

“(m) ‘turnover’ means the aggregate of the sale-prices received and receivable by a dealer in respect of any sale of goods made during a given period after deducting therefrom—

(i) the amount arrived at by applying the following formula:—

$$\frac{\text{Rate of tax} \times \text{aggregate of sale-prices}}{100 \text{ plus rate of tax}}$$

Provided that no deduction on the basis of above formula shall be made if the amount by way of tax collected by a registered dealer in accordance with the provisions of the Act, has been otherwise deducted from the aggregate of sale-prices.

*Explanation:—*Where the turnover of a dealer is taxable at different rates the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax.

(ii) The amount of sale-prices of all goods returned to the dealer, within the prescribed period, by the purchasers of such goods.

Provided that satisfactory evidence of such return of goods and of refund or adjustment in

accounts of the sale-price thereof is produced before the assessing authority”;

(7) for clause (n) the following shall be substituted, namely:—

“(n) ‘year’ means a financial year, but in relation to any particular registered dealer for the purposes of the Act (except for the purposes specified under sections 4, 5, 11, 12, 13, and 14) means the year with reference to which, according to the option declared by such dealer within the prescribed period, the accounts of that dealer are ordinarily maintained in his books:

Provided that where an option has once been exercised by a registered dealer, he shall not, except with the consent of the Commissioner and upon such conditions as the Commissioner may determine, make any variation in respect thereof;”

3. Amendment of Section 4.—In Section 4 of the principal Act, —

(1) In sub-section (2) the words “on the expiry of two months from the date” shall be substituted by the words “on the expiry of one month from the date”;

(2) At the end of sub-section (2) the following proviso shall be inserted, namely:—

“Provided that a non-resident dealer or a casual trader shall be liable to pay tax on all sales effected after the date on which his gross turnover first exceeds the taxable quantum”.

(3) In sub-section (4) the words “on the expiry of two months from the date” shall be substituted by the words “on the expiry of one month from the date”.

(4) At the end of sub-section (4) the following proviso shall be inserted, namely:—

“Provided that a non-resident dealer or a casual trader shall be liable to pay tax on all sales effected after the date on which his gross turnover again exceeds the taxable quantum.”.

(5) For sub-section (5) the following shall be substituted, namely:—

“(5) In this Act the expression ‘taxable quantum’ means:—

(a) in relation to any dealer who imports or brings for sale any goods into Goa, Daman and Diu, or to whom any goods are despatched from any place outside Goa, Daman and Diu, for sale or who manufactures or produces any goods for sale, and the value of goods imported or brought, or manufactured, or produced by him or despatched to him, during the year is not less than Rs. 1500/- (Rupees one thousand five hundred), — ten thousand rupees;

(b) in relation to any dealer who imports or brings for sale any goods into Goa, Daman and Diu or to whom any goods for sale are despatched from any place outside Goa, Daman and Diu, or who manufactures or produces any goods for sale, and the value of goods imported or brought, or manufactured or produced by him, or despatched to him, during the year is less than Rs. 1500/- (Rupees one thousand five hundred), —twenty thousand rupees;

(c) in relation to a non-resident dealer who has no place of business in the territory of Goa, Daman and Diu but who sells goods in the territory and a casual trader, — rupees one thousand five hundred.

(d) in relation to any other dealer, — thirty thousand rupees.

Provided that if the Government is of opinion that having regard to the difficulty in maintaining accounts or for other sufficient cause the taxable quantum in respect of any class of dealers falling under clause (a), (b) or (c) should be increased, the Government may fix in respect of such class of dealers such taxable quantum, not exceeding thirty thousand rupees as may be specified in the notification."

4. Amendment of Section 5. — In Section 5 of the principal Act, —

(a) The words "on the expiry of two months" shall be substituted by the words "on the expiry of one month".

(b) At the end the following proviso shall be inserted, namely: —

"Provided that a non-resident dealer and a casual trader shall be liable to pay tax on all sales effected after the date on which his gross turnover again exceeds the taxable quantum."

5. Amendment of Section 7. — In Section 7 of the principal Act, —

(i) For the second proviso to clause (II) of sub-section (3) the following shall be substituted, namely: —

"Provided further that where any goods specified in the Certificate of Registration are purchased by a registered dealer for any of the purposes specified in item (a) or (b) but are utilised by him for any other purpose, or are not resold in the manner and within the period prescribed, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer, but the Commissioner or any person appointed under sub-section (1) of Section 3 to assist him shall, after giving a reasonable opportunity of being heard, impose penalty upon the purchasing dealer not exceeding the amount of tax which would result if such goods were subject to sales tax at the rate leviable on them at the time of their purchase."

(ii) For clause (III) of sub-section (3) the following shall be substituted, namely: —

"(III) Sales of goods which are specified by the Government under Section 8 as goods taxable at the first point, provided that in the case of such sales proof of payment of tax at the first point is adduced by the dealer to the satisfaction of the Commissioner.

Provided that where a manufacturer is not liable to pay tax on the first sale of the goods manufactured by him, under entry 68 of the Second Schedule, the first point for the purpose of this clause shall be the point of sale effected by the subsequent dealer who has purchased the goods from such manufacturer."

(iii) For clause (V) of sub-section (3) the following shall be substituted, namely: —

"(V) Sales of goods which are shown to the satisfaction of the Commissioner not to have taken place in Goa, Daman and Diu, or to have taken place in the course of inter-state trade or commerce within the meaning of Section 3 of the Central Sales Tax Act, 1956, (74 of 1956) or in the course of import of the goods into, or export of the goods out of, the territory of India, within the meaning of Section 5 of the said Central Sales Tax Act."

6. Amendment of Section 11. — In sub-section (1) of Section 11 of the principal Act, for the words and figures "under Section 4 or Section 6 of this Act" the words and figures "under Section 4, or Section 6, or sub-section (6) of Section 24 of the Act" shall be substituted.

7. Amendment of Section 15. — In Section 15 of the principal Act, —

(1) In sub-section (2) after the words "shall furnish such returns", the words "of the total turnover of the period to which such returns relate, in such manner", shall be inserted.

(2) At the end of sub-section (4) the following proviso shall be inserted, namely: —

"Provided that no such revised return shall be considered as such and it shall not be taken into consideration, if the assessing authority is satisfied that the return originally furnished was with intention to delay the payment of tax due in time, or with intent to defraud the Government of its revenue".

(3) After sub-section (5) the following sub-sections shall be inserted, namely: —

"(6) (a) The amount of tax assessed or reassessed for any period under Section 17 or Section 18 of the Act less any sum already paid by the dealer in respect of such period, and

(b) the amount of penalty, if any, levied under the Act, shall be paid by the dealer or by the person liable therefor into the appropriate Government Treasury by such date as may be specified in a notice or order issued under the Act, being a date not earlier than sixty days from the date of service of the notice or order:

Provided that the Commissioner or any person appointed to assist him under sub-section (1) of Section 3 of the Act, may, in respect of any particular dealer or person, and for reasons to be recorded in writing, extend the date of such payment, or allow him to pay the tax due or penalty, if any, or both by instalments.

(7) (a) When a dealer is in default in making payment of the tax assessed or reassessed or of penalty imposed, the Commissioner may in his discretion direct that, in addition to the amount of arrears a sum not exceeding six percent thereon per annum by way of interest plus a penalty equal to the amount of such interest shall be recovered from the dealer.

(b) Any amount of tax or penalty which remains unpaid after the date specified in the notice for payment, or in the order of imposi-

tion of penalty, or after the extended date of payment, and any instalments not duly paid, shall be recoverable as an arrear of land revenue.

(8) The Government may, by general or special order published in the Official Gazette, authorise any officer not below the rank of a Sales Tax Officer, to exercise, for the purpose of effecting recovery of the amount of tax or penalty due from any dealer or person under the Act, the powers of a Collector under the Goa, Daman and Diu Land Revenue Code, 1968 (Act No. 9 of 1969) to recover the dues as arrears of land revenue".

8. **Insertion of new Section 15A.**— After Section 15 of the principal Act the following shall be inserted, namely:—

"15A. **Special mode of recovery.**— (1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time, or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known to the Commissioner, require,—

(a) any person from whom any amount of money is due or may become due to a dealer who has failed to pay the amount of tax due or penalty imposed under the Act, or

(b) any person who holds or may subsequently hold money for or on account of such dealer, to pay to the Commissioner, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (but not before the money becomes due or is held as aforesaid), so much of the money as is sufficient to pay the amount due by the dealer in respect of the arrears of tax and penalty, or both, or the whole of the money when it is equal to or less than that amount.

Explanation:— For the purpose of this sub-section, the amount of money due to a dealer from, or money held for or on account of a dealer by, any person, shall be calculated after deducting therefrom such claims, if any, lawfully subsisting as may have fallen due for payment by such dealer to such person.

(2) The Commissioner may at any time, amend or revoke any such notice, or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice under this Section shall be deemed to have made the payment under the authority of the dealer, and the receipt of the Commissioner shall constitute a good and sufficient discharge of the liability of such person, to the extent of the amount referred to in the receipt.

(4) Any person discharging any liability to the dealer after receipt of the notice referred to in this Section shall be personally liable to the Commissioner to the extent of the liability discharged, or to the extent of the liability of the dealer for tax and penalty, whichever is less.

(5) Where a person to whom a notice under this Section is sent objects to it, by a statement in writing that the sum demanded or any part thereof is not due or payable to the dealer or that

the amount held for or on account of the dealer is under genuine dispute, the Commissioner shall hold an enquiry and after giving a reasonable opportunity of being heard to such person and the dealer, shall make such order as he thinks fit.

(6) Any amount of money which a person is required to pay to the Commissioner or for which he is personally liable to the Commissioner under this Section shall, if it remains unpaid, be recoverable as an arrear of land revenue."

9. **Amendment of Section 17.**— For Section 17 of the principal Act the following shall be substituted, namely:—

"17. **Assessment of tax.**— (1) The amount of tax due from a registered dealer shall be assessed separately for each year during which he is liable to pay the tax.

Provided that, when such dealer fails to furnish any return as required under sub-section (3) of section 15 of the Act relating to any period of any year, by the prescribed date and in the prescribed manner, the Commissioner may, if he thinks fit, assess the tax due from such dealer separately for different parts of such year;

Provided further, that the Commissioner may, subject to such conditions as may be prescribed, and for reasons to be recorded in writing, assess the tax due from any dealer during a part of a year.

(2) (a) The Commissioner, for the purpose of satisfying himself that the returns furnished by a dealer are correct and complete, may require the presence of the dealer if he thinks it necessary, or the production of further evidence, and shall serve on such dealer in the prescribed manner a notice requiring him, on a date and at a place specified therein, either to attend and produce or cause to be produced all evidence on which such dealer relies in support of his returns, or to produce such evidence as is specified in the notice.

(b) If the Commissioner is satisfied that the returns furnished in respect of any period are correct and complete he shall assess the amount of tax due from the dealer on the basis of such returns.

(c) If the Commissioner is not satisfied that the returns furnished in respect of any period are correct and complete, he shall, after considering all the evidence which may be produced and after giving the dealer an opportunity of being heard, assess to the best of his judgement the amount of tax due from the dealer.

(d) If the dealer fails to comply with the terms of any notice issued under the preceding clause (a) the Commissioner shall assess to the best of his judgement the amount of tax due from him.

(3) If a dealer does not furnish return as required under sub-section (2) of Section 15 of the Act in respect of any period by the prescribed date, the Commissioner may serve on the dealer in the prescribed manner a notice requiring him, on a date and at a place specified therein, either to attend and produce or cause to be produced such evidence as is specified in the notice, and after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgement, the amount of tax (if any), due from him.

(4) In assessing the dealer under any of the clauses (b), (c) and (d) of sub-section (2), or sub-section (3) if the Commissioner has reasons to believe that the dealer has failed, without sufficient cause, to comply with the requirements of sub-section (2) or sub-section (3) or sub-section (4) of Section 15 of the Act, shall after giving such dealer a reasonable opportunity of being heard, direct him, either at the time of assessment or thereafter, to pay by way of penalty in addition to the amount of tax assessed a sum not exceeding one-and-a-half times the amount of tax so assessed.

(5) (a) If the Commissioner has reason to believe that a dealer is liable to pay tax in respect of any period, but has failed to apply for registration within time as required by Section 11 of the Act, the Commissioner shall proceed to assess the amount of tax due from the dealer in respect of such period, and all subsequent periods, and for this purpose shall serve upon the dealer in the prescribed manner a notice requiring him to be present and produce or cause to be produced all evidence which he may possess or such evidence as is specified in the notice.

In assessing the dealer in the manner referred to above a reasonable opportunity of being heard shall be given to him.

(b) If the dealer fails to comply with the terms of the notice issued under preceding clause (a), the Commissioner may assess to the best of his judgement the amount of tax due from him.

(c) In any of the assessments made under preceding clause (a) or (b), if the Commissioner has reasons to believe that the default in applying for registration within time was made without reasonable cause, he shall, after giving the dealer a reasonable opportunity of being heard, direct him, either at the time of assessment or thereafter, to pay by way of penalty, in addition to the amount of tax assessed, a sum not exceeding one-and-a-half times that amount.

(6) No assessment under sub-section (2) or sub-section (3) shall be made after the expiry of four years, and no assessment under sub-section (5) shall be made after the expiry of six years, from the end of the year in respect of which or part of which such assessment is made:

Provided that, where such assessment is made in consequence of or to give effect to any order of an appellate or revisional authority or of a Court, the period of four years or six years, as the case may be, shall be reckoned from the date of such order.

Provided further that in computing the period of limitation laid down in the above sub-section (6), any period during which assessment proceedings are stayed by an order or injunction of any Court or authority shall be excluded.

(7) Any assessment made under this Section shall be without prejudice to any penalty which may be imposed under other provisions of the Act, or to any prosecution instituted for an offence under this Act."

10. Amendment of Section 18.—For Section 18 of the principal Act the following shall be substituted, namely:—

"18. Assessment and reassessment of tax.—(1) If the Commissioner has reasons to believe that any turnover of sales of any goods chargeable to tax under the Act, has in respect of any year escaped assessment, or has been under assessed, or assessed at a lower rate, or that any deductions have been wrongly made, in an order of assessment made under Section 17, then the Commissioner may—

(a) where he has reasons to believe that the dealer has concealed such sales or any material particulars relating thereto, or has knowingly furnished incorrect particulars or returns, at any time within eight years, and

(b) in any other case, at any time within five years, of the end of the period to which such turnover or deductions relate, serve on the dealer liable to pay tax a notice requiring him, on a date and at a place specified therein, either to attend or produce or cause to be produced such evidence as may be specified in the notice, and may proceed to assess or reassess the amount of tax due from such dealer; and accordingly the other provisions of the Act and the Rules made thereunder shall, so far as may be, apply as if the notice were a notice referred to in sub-section (2) or (3) of Section 17 of the Act:

Provided that the amount of tax shall be assessed at the rates at which it would have been liable to tax had thereto been no under assessment or escapement or assessment at a lower rate, but after making deductions, if any, admissible under the Act during the period to which the turnover relates.

(2) Nothing in sub-section (1) shall apply to any proceeding, (including any notice issued) under Section 17 of the Act.

(3) Any assessment or reassessment made under this Section shall be without prejudice to any penalty imposed, or to any prosecution instituted, for an offence under the Act."

11. Amendment of Section 19.—For Section 19 of the Principal Act the following shall be substituted, namely:—

"19. Refund.—(1) The Commissioner shall, in the prescribed manner, refund to the dealer any amount of tax or penalty paid by such dealer in excess of the amount due from him under the Act or unduly paid by him. The refund referred to above may arise from an order of assessment, or from an order passed in appeal, revision or review under Section 27, or reference under Section 28 of the Act, or from an order passed in respect of payment unduly made.

(2) (a) Where any declared goods referred to in Section 14 of the Central Sales Tax Act, 1956, (74 of 1956) are sold by a dealer in the course of inter-state trade or commerce and such dealer shows to the satisfaction of the Commissioner that a tax under this Act has been levied in respect of any earlier sale of such goods made within the Union territory of Goa, Daman and Diu, then an amount

equal to the tax so levied shall be refunded to such dealer in such manner, and subject to such conditions as may be prescribed.

(b) On receipt of the application for refund referred to above the Commissioner shall, after verifying the claim, make an order either granting or rejecting the application wholly or in part:

Provided that no order rejecting the refund or granting the same in part shall be passed unless the dealer is given an opportunity of being heard.

If the refund is granted it shall be refunded in the same manner as it is prescribed for refund referred to in sub-section (1).

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Commissioner shall adjust the amount due to be refunded under sub-section (1) or sub-section (2) towards the recovery of any amount due from the dealer on the date of adjustment and shall then refund the balance, if any.

(4) Nothing in sub-section (1) or sub-section (2) shall be deemed to empower the Commissioner to amend, vary or rescind any assessment or to amend, vary or rescind any order passed on appeal, revision, or review under Section 27, or reference under Section 28 of the Act, or to confer on a dealer any relief in addition to what he is entitled under the provisions of this Act or Section 15 of the Central Sales Tax Act, 1956 (74 of 1956)".

12. Amendment of Section 24. — In Section 24 of the principal Act, —

(1) In sub-section (2) after the words "then each member or group of members" and before the word "shall" the words "and the legal representative of any such member who is deceased, notwithstanding such partition" shall be inserted.

(2) For sub-section (3) the following shall be substituted, namely: —

"(3) Where a dealer liable to pay tax under the Act is a firm, or other association of persons, and such firm or association of person is partitioned, or dissolved, as the case may be, then every person who was a partner or member, and the legal representative of any such person or member who is deceased shall, notwithstanding such partition or its dissolution, be jointly and severally liable for the payment of tax, penalty, or other amount payable under the Act by such firm or association of person, whether such tax (including any penalty) has been assessed before such partition or dissolution but has remained unpaid, or is assessed after partition or dissolution."

13. Insertion of new Section 24A. — After Section 24 of the principal Act the following shall be inserted, namely: —

"24A — Liability to tax, and assessment of a dealer after his death, of a Hindu Undivided Family after its partition, of a firm or association of persons, after its partition or dissolution, etc.

(1) Where a dealer liable to pay tax under this Act is an individual person and he happens to expire, the tax payable under this Act by such individual person, for the period upto the date of his death, shall be assessed as if he was alive

and all the provisions of the Act shall apply accordingly.

(3) Where a dealer liable to pay tax under the Act is a Hindu Undivided Family, a firm, or other association of persons, and such family, firm, or association of persons is partitioned or dissolved, as the case may be, the tax payable under the Act by such family, firm, or association of persons, for the period upto the date of such partition or dissolution, shall be assessed as if no such partition or dissolution had taken place and all the provisions of the Act shall apply accordingly."

14. Amendment of Section 27. — In Section 27 of the Principal Act, —

(1) In clause (b) after the words "second appeal referred" the word "to" shall be inserted and the words and figures "referred to in clause (1)" shall be substituted by the words and figures "referred to in sub-section (1)".

(2) After sub-section (3A) the following shall be inserted, namely: —

"(3AA) — In disposing of the Revision, the Commissioner shall have the same powers as those of the appellate authority under sub-section (2)."

15. Insertion of new Section 27A. — After Section 27 of the principal Act the following shall be inserted, namely: —

"27A. Non-appealable orders. — No appeal and no application for revision shall lie against: —

(1) a notice issued under the Act calling upon a dealer for assessment or asking a dealer to show cause as to why he should not be prosecuted for an offence under the Act, or

(2) an order pertaining to the seizure or retention of account books, registers and other documents, or

(3) an order sanctioning a prosecution under the Act."

16. Amendment of Section 31. — For sub-section (1) of Section 31 of the principal Act the following shall be substituted, namely: —

"(1) If the Commissioner or any person appointed under sub-section (1) of Section 3 to assist him in the course of any proceedings under this Act is satisfied that a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchase, or stock of goods, or has concealed any particulars of his sales or purchases, or has furnished to, or produced before, any authority under this Act or the Rules made thereunder, any account, return or information which is false or incorrect in any material particular, the Commissioner or any person appointed to assist him under sub-section (1) of Section 3 may, after giving the dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, an amount not exceeding one and half times the amount of tax which would have been avoided if the accounts or figures or particulars were accepted as correct".

17. **Amendment of Section 31A.** — In Section 31A of the principal Act the words "and the amount of tax so collected" shall be deleted.

18. **Amendment of Section 36.** — In Section 36 of the principal Act, in sub-section (2), —

(i) Clause (a) shall be renumbered as clause (aa) and clause (aa) shall be renumbered as clause (aaa) of that sub-section; and

(ii) before clause (aa) so renumbered, the following clause (a) shall be inserted, namely: —

"(a) The manufactures or manufacturing processes not to be included in the scope of definition 'manufacture' contained in clause (f) of Section 2".

Statement of Objects and Reasons

The Goa, Daman and Diu Sales Tax Act, 1964 has been enforced in this Union Territory w. e. f. 1-11-1964. The experience gathered since the enforcement of the said Act has shown that for efficient implementation of the Act some of its provisions are required to be amended.

The Sales Tax Advisory Committee has also recommended to amend some of the existing provisions of the Act in order to remove the difficulties experienced by the dealers.

The present Bill seeks to amend the existing provisions of the 1964 Act so as to remove the difficulties experienced by the department as well as the dealers under the said 1964 Act.

Financial memorandum

No financial commitment is involved in this bill and also there will be no additional expenditure due to the proposed amendment will since the existing machinery will carry out the extra work which may result on account of the amendments.

Panaji
March, 1973.

D. B. BANDODKAR
Chief Minister

Panaji,
7th March, 1973.

B. M. MASURKAR
Secretary to the Legislative Assembly of Goa, Daman and Diu.

Administrator's recommendation under section 23 of the Government of Union Territories Act, 1963.

In pursuance of clause (a) of sub-Section (1) of Section 23 of the Government of Union Territories Act, 1963, the Administrator of Goa, Daman and Diu has recommended to the Legislative Assembly of Goa, Daman and Diu the introduction and consideration of the Goa, Daman and Diu Sales Tax (Amendment) Bill, 1973.

LA/A/7/578/73

The following Bill which was introduced in the Legislative Assembly of Goa, Daman and Diu on 9th March, 1973, is hereby published for general information in pursuance of the provisions of Rule 127 of the Rules of Procedure and Conduct of Business of the Legislative Assembly.

The Goa, Daman and Diu Excise Duty (Amendment) Bill, 1973

(Bill No. 8 of 1973)

A BILL

further to amend the Goa, Daman and Diu Excise Duty Act, 1964 (5 of 1964).

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Twenty-fourth Year of the Republic of India as follows: —

1. **Short title and commencement.** — (1) This Act may be called the Goa, Daman and Diu Excise Duty (Amendment) Act, 1973.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. **Amendment of long title.** — In the Goa, Daman and Diu Excise Duty Act, 1964 (5 of 1964) hereinafter referred to as "the principal Act", in the long title, for the word "liquor", the words "certain articles" shall be substituted.

3. **Amendment of Section 2.** — In Section 2 of the principal Act, —

(i) in clause (c), for the words "foreign liquor", the words "Indian made foreign liquor" shall be substituted;

(ii) after clause (f), the following clause shall be inserted, namely: —

'(ff) "excisable article" means —

- (i) liquor, other than foreign liquor,
- (ii) intoxicating drug, or
- (iii) opium,

but does not include any medicinal and toilet preparations containing alcohol, opium, Indian hemp and other narcotic drugs and narcotics';

(iii) for clause (i), the following clause shall be substituted, namely: —

(i) "foreign liquor" means any liquor (other than rectified spirit, denatured spirit and perfumed spirit) imported into India and on which a duty of customs is leviable under the Indian Tariff Act, 1934 (Central Act 2 of 1934) or the Customs Act, 1962 (Central Act 52 of 1962);"

(iv) after clause (k), the following clauses shall be inserted, namely: —

'(kk) "Indian made foreign liquor" means brandy, whisky, gin, rum, milk punch, wines or beer manufactured in India and such other liquor as may be declared by the Government as Indian made foreign liquor;

(kkk) "intoxicating drug" means —

- (i) the leaves, small stalks and flowering on fruiting tops of the Indian hemp plant;
- (ii) bhang, siddi or ganja;
- (iii) charas, that is to say, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulation,

other than those necessary for packing and transport; or

(iv) any mixture, with or without neutral materials, of any of the intoxicating drugs mentioned in sub-clauses (i), (ii) and (iii);

(v) for clause (m), the following clause shall be substituted, namely:—

‘(m) “manufacture” includes every process, whether natural or artificial, by which any excisable article is produced or prepared wholly or partly and, in relation to liquor, also includes redistillation and every process for the rectification, reduction, flavouring, blending or colouring thereof;’

(vi) after clause (o), the following clause shall be inserted, namely:—

‘(oo) “opium” means—

(i) the capsules of the poppy (*Papaver somniferum* L), whether in their original form or cut, crushed or powdered, and whether or not juice has been extracted therefrom;

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; or

(iii) any mixture, with or without neutral materials, or any of the above forms of opium,

and includes any derivatives of opium.’

4. Amendment of sections 4, 5, 6 and 33.—In sections 4, 5 (excepting the proviso), 6 and 33 for the word “liquor” the words “excisable article” shall be substituted.

5. Amendment of section 7.—In section 7 of the principal Act,—

(i) in sub-section (1), for the words “No liquor shall be manufactured or produced or bottled”, the words “No excisable article shall be manufactured or produced, no liquor shall be bottled” shall be substituted;

(ii) in sub-section (2), for the word “liquor” the words “excisable article” shall be substituted.

6. Amendment of section 8.—In section 8 of the principal Act,—

(i) in sub-section (1),—

(a) for the words “licensed manufacturer or dealer of liquor”, the words “licensed manufacturer or dealer of any excisable article” shall be substituted;

(b) for the words “quantity of liquor”, the words “quantity of such article” shall be substituted;

(ii) in sub-section (2),—

(a) for the words “vendor of liquor”, the words “vendor of any excisable article or foreign liquor” shall be substituted;

(b) for the words “transactions in liquor” the words “transactions in such article or foreign liquor” shall be substituted.

7. Amendment of sections 9, 19 and 26.—In sections 9, 19 and 26, for the words “liquor” the words “excisable article or foreign liquor” shall be substituted.

8. Substitution of new section for section 10.—For the section 10 of the principal Act, the following section shall be substituted, namely:—

“10. Prohibition of import, export, transport, possession or manufacture of excisable articles.—Notwithstanding anything contained in this Act, the Government may, if it considers necessary in the public interest so to do, by notification, prohibit the import, export, transport, possession or manufacture of any excisable article.”

9. Amendment of section 11.—In clause (b) of section 11 of the principal Act, for the word “liquor”, the words “excisable articles” shall be substituted.

10. Amendment of section 12.—In section 12 of the principal Act, for the words “not exceeding the rates set forth in the Schedule, a duty of excise on all liquor”, the words and letters “not exceeding the rates set forth in Part A or Part B of the Schedule, as the case may be, a duty of excise on all excisable articles” shall be substituted.

11. Amendment of section 13.—In section 13 of the principal Act,—

(i) in the opening portion, for the word “liquor” the words “any excisable article” shall be substituted;

(ii) in clauses (a) and (b), for the word “liquor”, the words “such excisable article” shall be substituted.

12. Amendment of section 14.—In sub-section (1) of section 14 of the principal Act, for the words “in the Schedule”, the words and letter “in Part C of the Schedule” shall be substituted.

13. Substitution of new section for section 15.—For section 15 of the principal Act, the following section shall be substituted, namely:—

“15. Licences and permits.—(1) Every licence or permit under this Act shall be granted,—

(i) by such officer,

(ii) for such period,

(iii) subject to such conditions or restrictions, and

(iv) in such form and containing such particulars, as may be prescribed.

(2) No licence or permit under this Act shall be granted except on payment of fees at the rates specified in Part D of the Schedule”.

14. Amendment of section 18.—In section 18 of the principal Act,—

(i) in the opening portion, for the words “manufactures or sells any liquor”, the words “manufactures or sells any excisable article or sells any foreign liquor” shall be substituted;

(ii) in clause (b), for the word “liquor”, the words “excisable article or foreign liquor” shall be substituted.

15. Amendment of section 20. — In section 20 of the principal Act, —

(i) for the words "excisable goods", the words "excisable articles or foreign liquor" shall be substituted;

(ii) for the *Explanation*, the following *Explanation* shall be substituted, namely: —

"*Explanation.* — For the purposes of this section, "excisable articles or foreign liquor" includes the container thereof".

16. Amendment of section 22. — In sub-section (2) of section 22 of the Principal Act, —

(i) in clause (e), for the word "liquor", the words "excisable article" shall be substituted;

(ii) in clause (f), for the words "manufacture or sell liquor", the words "manufacture any excisable article or sell such article or foreign liquor" shall be substituted.

(iii) in clause (g), (k) and (q), for the word "liquor", the words "excisable article or foreign liquor" shall be substituted.

17. Amendment of section 23. — In section 23 of the principal Act, —

(i) in clause (a), for the word "liquor", the words "excisable article" shall be substituted;

(ii) in clause (b), for the word "liquor", the words "excisable article or foreign liquor" shall be substituted.

(iii) in clause (c), for the words "or liquor", the words "excisable article or foreign liquor" shall be substituted.

18. Amendment of section 25. — In section 25 of the principal Act, —

(i) for the word "liquor", wherever it occurs, the words "excisable article, foreign liquor" shall be substituted;

(ii) in sub-section (1), for the words "or article", the words "or other article" shall be substituted.

19. Amendment of section 30. — In section 30 of the principal Act, —

(i) in clause (a), for the word "liquor", the words "any excisable article" shall be substituted;

(ii) for clause (b), the following clause shall be substituted, namely: —

"(b) manufactures or produces any excisable article or bottles liquor; or";

(iii) in clause (d), for the word "liquor", the words "any excisable article" shall be substituted.

(iv) in clause (e), for the word "liquor", the words "any excisable article or foreign liquor" shall be substituted.

20. Amendment of section 32. — In section 32 of the Principal Act, —

(i) in clause (a), after the word "strength", the words "or to affect its purity" shall be added;

(ii) in clause (b), after the words "foreign liquor", the words "or Indian made foreign liquor" shall be inserted.

21. Amendment of section 36. — In section 36 of the principal Act, —

(i) for the words "any liquor", the words "any excisable article or foreign liquor" shall be substituted;

(ii) for the words "of liquor" in the two places they occur, the words "of excisable articles" shall be substituted.

22. Amendment of section 37. — In section 37 of the principal Act, —

(a) in sub-section (1), —

(i) for the word "liquor", the words "excisable articles, foreign liquor", shall be substituted;

(ii) the following proviso shall be inserted, namely: —

"Provided that no confiscation under this sub-section shall be made in cases where

(a) duty paid liquor is transported within the Territory without the authority of a permit granted under this Act; or

(b) any licensed premises are kept open in contravention of any rule made under clause (n) of sub-section (2) of section 22.";

(b) in sub-section (2), —

(i) for the words "liquor", in the first two places it occurs, the words "excisable article or foreign liquor" shall be substituted;

(ii) for the words "such liquor", the words "such excisable article, foreign liquor" shall be substituted.

23. Amendment of section 42. — In section 42 of the principal Act, —

(i) in sub-section (1), for the word "liquor", the words "excisable article or foreign liquor" shall be substituted;

(ii) in sub-section (2), for the words "possession or transport of liquor", the words "or possession of foreign liquor" shall be substituted.

24. Substitution of new section for section 45. — For section 45 of the principal Act, the following section shall be substituted, namely; —

"45. *Repeal.* — (1) On the commencement of this Act, any law in force in the Union Territory of Goa, Daman and Diu authorising taxes and duties on manufacture and sale of excisable article or providing for any matter for which provision is made in this Act, shall stand repealed.

(2) The provisions of the General Clauses Act, 1897 shall apply to the repeal under sub-section (1) as if the law referred to therein were a Central Act.

25. Substitution of new Schedule for Schedule. —
For the Schedule to the principal Act, the following Schedule shall be substituted, namely: —

"SCHEDULE

(See sections 12, 14 and 15)

PART A

(See Section 12)

Rates of duty on excisable articles manufactured in or passed out of any place of manufacture or storage including a distillery, brewery, winery or warehouse licensed or established under this Act

(1) Indian made foreign liquor other than milk punch, wines and beer	Rs. 10.50 per proof litre.
(2) Milk punch and wines	Rs. 4.00 per bulk litre.
(3) Beer	Rs. 0.75 ps. per bulk litre.
(4) Country liquor (other than Cashew liquor)	Re. 1 per proof litre.
(5) Cashew liquor	Re. 1.50 ps. per proof litre.
(6) Rectified spirit or absolute alcohol except when used for manufacture of liquor or for medical purposes	Re. 0.50 ps. per proof litre.
(7) Blended country liquor	Re. 0.50 ps. per bulk litre in addition to the rates of duty for items (4) or (5) above, as the case may be.
(8) Opium, ganja and other intoxicating drugs	Rs. 800 per kg.

PART B

(See Section 12)

Amount of countervailing duty on excisable articles imported in the Territory

The amount by which the excise duty paid on an excisable article at the place (outside the territory) of its manufacture falls short of the excise duty that would have been leviable on the same quantity of the imported excisable article under Part-A above on the date of its import, had it been manufactured in this territory.

PART C

(See Section 14)

Tree Tax per tree

Coconut tree Rs. 10/- per year; cajuri and date tree Rs. 3/- per month.

PART D

(See Section 15)

Rates of fees on licences per year

I. Manufacture:

(1) For manufacturing Indian made foreign liquor other than beer, wines or milk punch:	
Upto 20,000 bulk litres	Rs. 500/-
Exceeding 20,000 bulk litres but not exceeding 50,000 bulk litres	Rs. 800/-
Exceeding 50,000 bulk litres but not exceeding 1,00,000 bulk litres	Rs. 1200/-
For every additional 1,00,000 bulk litres or part thereof in excess of 1,00,000 bulk litres	Rs. 300/-

(2) For manufacturing beer:

Upto 50,000 bulk litres	Rs. 500/-
Exceeding 50,000 bulk litres but not exceeding 1,50,000 bulk litres	Rs. 800/-
Exceeding 1,50,000 bulk litres but not exceeding 3,00,000 bulk litres	Rs. 1200/-
Exceeding 3,00,000 bulk litres but not exceeding 5,00,000 bulk litres	Rs. 1500/-
For every additional 2,00,000 bulk litres or part thereof in excess of 5,00,000 bulk litres	Rs. 500/-

(3) For manufacturing wines or milk punch:

Upto 5,000 bulk litres	Rs. 200/-
For every additional 5,000 bulk litres or part thereof in excess of 5,000 bulk litres ...	Rs. 150/-

(4) For manufacturing rectified spirit or absolute alcohol or both:

Upto 25,000 bulk litres	Rs. 300/-
Exceeding 25,000 bulk litres but not exceeding 50,000 bulk litres	Rs. 600/-
For every additional 25,000 bulk litres or part thereof in excess of 50,000 bulk litres ...	Rs. 200/-

(5) For manufacturing country liquor:

(1) by still with capacity not exceeding 150 litres	Rs. 20/- per still
(2) in any other case:	
Upto 20,000 bulk litres	Rs. 100/-
Exceeding 20,000 bulk litres but not exceeding 50,000 bulk litres	Rs. 300/-
Exceeding 50,000 bulk litres but not exceeding 1,00,000 bulk litres	Rs. 500/-
For every additional 20,000 bulk litres or part thereof in excess of 1,00,000 bulk litres	Rs. 40/-

(6) For blending of country liquor

Rs. 200/-

(7) For manufacturing denatured spirituous preparations

Rs. 100/-

(8) For manufacturing intoxicating drugs or opium

Rs. 5000/-

(9) For bottling of denatured spirit, rectified spirit and denatured spirituous preparations

Rs. 0.10 ps. per bottle subject to a minimum of Rs. 100/-.

(10) For bottling of country liquor

Rs. 0.05 ps. per bottle subject to a minimum of Rs. 100/-.

(11) For bottling of beer

Rs. 0.03 ps. per bottle subject to a minimum of Rs. 500/-.

(12) For bottling of wines and milk punch

Rs. 0.05 ps. per bottle subject to a minimum of Rs. 50/-.

(13) For bottling of foreign liquor or Indian made foreign liquor other than beer, wines or milk punch

Rs. 0.06 ps. per bottle subject to a minimum of Rs. 200/-.

Provided that in preceding items 9 to 13 for bottling in bottles of capacities upto 375 mls. the fee will be ...

50% of the licence fee per bottle.

Explanation 1:—

For the purpose of items 9 to 13, "bottle" means a bottle of the capacity upto 750 mls. only.

Explanation 2:—

"Denatured spirituous preparations" means preparations made out of denatured spirit, such as french polish, thinner, varnish, dyes and colours.

II. Sale:

- (1) For wholesale vendors of liquor other than country liquor:— Cities Rs. 1500/-, Towns Rs. 1000/- and Villages Rs. 600/-.
- (2) For retail vendors of liquor other than country liquor:— Cities Rs. 600/-, Towns Rs. 400/- and Villages Rs. 300/-.
- (3) For wholesale vendors of country liquor:— Cities Rs. 1200/-, Towns Rs. 800/- and Villages Rs. 600/-.
- (4) For retail vendors of country liquor:— Cities Rs. 600/-, Towns Rs. 500/- and Villages Rs. 400/-.
- (5) For retail vendors of foreign liquor, Indian made foreign liquor and country liquor:— Cities Rs. 800/-, Towns Rs. 600/- and Villages Rs. 400/-.
- (6) For wholesale vendors of rectified spirit or absolute alcohol or both:— Cities Rs. 450/-, Towns Rs. 300/- and Villages Rs. 250/-.
- (7) For retail vendors of rectified spirit or absolute alcohol or both:— Cities Rs. 100/-, Towns Rs. 50/- and Villages Rs. 25/-.
- (8) For wholesale vendors of denatured spirit:— Cities Rs. 400/-, Towns Rs. 300/- and Villages Rs. 250/-.
- (9) For retail vendors of denatured spirit:— Cities Rs. 100/-, Towns Rs. 50/- and Villages Rs. 25/-.
- (10) For wholesale vendors of denatured spirituous preparation:— Cities Rs. 400/-, Towns Rs. 300/- and Villages Rs. 250/-.
- (11) For retail vendors of denatured spirituous preparations:— Cities Rs. 100/-, Towns Rs. 50/- and Villages Rs. 25/-.
- (12) For wholesale vendors of intoxicating drug or opium or both Rs. 5000/-.
- (13) For retail vendors of intoxicating drug or opium or both Rs. 4000/-.

Explanation: For the purpose of the above:

- (a) "Cities" means the municipal areas of Panaji, Margao, Mapusa and Sambhaji.
- (b) "Towns" means the municipal areas of Ponda, Bicholim, Valpoi, Pernem, Sanguem, Quepem, Chauri, Curchorem, Sanquelim, Daman and Diu.
- (c) "Villages" means all other parts of the Territory.

III. Import and Export:

For each permit for import or export of liquor: —Rs. 10/-

IV. Miscellaneous:

- (1) For retail vendors of liquor for keeping the shop open up to two hours after the prescribed time:— a surcharge of 50% of the licence fee; and

For Restaurants or Hotels for keeping bars open from 9 p. m. to 5 a. m. on certain occasions as may be prescribed:— an additional fee of Rs. 15/- at every occasion.

- (2) For an occasional licence for retail vendors of liquor:— First day: Rs. 10/-; next 4 days: Rs. 6/- per day; next 15 days: Rs. 4/- per day; next 40 days: Rs. 2.50 ps. per day and next 60 days: Re. 1.50 ps. per day.

Explanation.— For the purpose of occasional licence, "day" means the prescribed period to keep open a liquor shop or any other particular period of twelve hours."

Statement of Objects and Reasons

The main object of the bill is to provide for the levy of excise duty on the manufacture, import and

export of intoxicating drugs as well as to increase the rates of licence fees so as to raise additional resources for the Fourth Five Year Plan.

The intoxicating drugs have not so far been brought under the purview of the Goa, Daman and Diu Excise Duty Act, 1964 and the Rules made thereunder. It is therefore necessary to provide for a systematic levy of excise duty on Opium, Indian Hemp, narcotics and other narcotic drugs as is prevailing in the other parts of the Country.

Further the present rates of licence fees leviable under the Goa, Daman and Diu Excise Duty Act, 1964 are very low compared to the rates of licence fees in force in the neighbouring States. Hence it is felt necessary to increase the rates of licence fees in this Territory as there is room for increase thereof.

Financial Memorandum

No financial commitment is involved in this Bill.

Panaji,

7th March, 1973.

D. B. BANDODKAR

Chief Minister

Assembly Hall

Panaji,

7th March, 1973.

B. M. MASURKAR

Secretary to the Legislative
Assembly of Goa, Daman
and Diu

Administrator's recommendation under section 23 of the Goa, Daman and Diu Union Territories Act, 1963.

In pursuance of clause (a) of sub-section (1) of section 23 of the Government of Union Territories Act, 1963, the Administrator of Goa, Daman and Diu, has recommended the introduction and consideration of the Goa, Daman and Diu Excise Duty (Amendment) Bill, 1973 in the Legislative Assembly.

LA/A/7/580/73

The following Bill which was introduced in the Legislative Assembly of Goa, Daman and Diu on 12th March, 1973, is hereby published for general information in pursuance of the provisions of Rule 127 of the Rules of Procedure and Conduct of Business of the Legislative Assembly.

The Goa, Daman and Diu Shops and Establishments Bill, 1973

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51. Inspectors to be Public Servants.

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52. Penalties.
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CHAPTER XI

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57. Maintenance of registers and records and display of notices, etc.
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The Goa, Daman and Diu Shops and Establishments Bill, 1973

(Bill No. 9 of 1973)

A

BILL

to provide for the regulation of conditions of work and employment in shops, commercial establishments, restaurants, theatres and other establishments and for matters connected therewith.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the twenty-fourth year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. **Short title, extent, commencement and application.**— (1) This Act may be called the Goa, Daman and Diu Shops and Establishment Act, 1973.

(2) It extends to the whole of the Union territory of Goa, Daman and Diu.

(3) It shall come into force in such areas and on such dates as the Government may, from time to time, by notification, appoint.

2. **Definitions.**— In this Act, unless the context otherwise requires:—

(1) "apprentice" means a person who is employed, whether on payment of wages or not, for the purpose of being trained in any trade, craft or employment in any establishment;

(2) "child" means a person who has not completed his twelfth year of age;

(3) "closed" means not open, for the service of any customer, or for any trade or business or for any other purpose connected with the establishment except loading, unloading and annual stock-taking;

(4) "commercial establishment" means any establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes—

(a) a society registered under the Societies Registration Act 1860 (Central Act XXI of 1860) or charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary to, such business trade or profession;

- (b) an establishment which carries on the business of advertising, commission agency, forwarding or commercial agency or which is a clerical department of a factory or of any industrial or commercial undertaking;
 - (c) an insurance company, Joint Stock Company, bank, broker's office or exchange; and
 - (d) any other establishment which the Government may notify to be a commercial establishment, but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.
- (5) "day" means a period of twenty-four hours beginning at mid-night, except that in the case of an employee, whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning from the time when such employment commences;
- (6) "dependant" means in relation to a deceased employee, his nominee or in the absence of such nominee, his heir or legal representative;
- (7) "employee" means a person wholly or principally employed in, and in connection with, any establishment, and includes an apprentice or any clerical or other staff of a factory or industrial establishment which falls outside the scope of the Factories Act, 1948; (Central Act 63 of 1948) but does not include the husband, wife, son, daughter, father, mother, brother or sister of an employer or his partner, who is living with and depending upon such employer or partner and is not in receipt of any wages;
- (8) "employer" means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes the manager, agent or other person acting in the general management or control of an establishment;
- (9) "factory" means a factory within the meaning of the Factories Act, 1948; (Central Act 63 of 1948).
- (10) "Government" means the Administrator of the Union Territory of Goa, Daman and Diu appointed under article 239 of the Constitution.
- (11) "gratuity" means the gratuity payable under Section 39;
- (12) "Inspector" means an Inspector appointed under section 49;
- (13) "notification" means a notification published in the Goa, Daman and Diu Government Gazette;
- (14) "opened" means opened for the service of any customer or for any trade or business connected with the establishment;
- (15) "periods of work" means the time during which an employee is at the disposal of the employer;
- (16) "prescribed" means prescribed by rules made under this Act;
- (17) "residential hotel" means any premises used for the reception of guests and travellers desirous of dwelling or sleeping therein and includes a club;
- (18) "restaurant" or "eating house" means any premises in which is carried on wholly or principally the business of supplying meals or refreshments to

the public or a class of the public for consumption on the premises and includes a Halwai shop but does not include a restaurant attached to a theatre or restaurant or a canteen attached to a factory if the persons employed therein are allowed the benefits provided for workers under the Factories Act, 1948. (Central Act 63 of 1948).

(19) "shop" means any premises where goods are sold, either by retail or wholesale or both or where services are rendered to customers and includes an office, store-room, godown, ware-house, sale depot and work-place, whether in the same premises or elsewhere, used in connection with such trade or business, but does not include a factory, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948; (Central Act 63 of 1948).

(20) "theatre" includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of cinematograph or other suitable apparatus or for dramatic or circus performances or for any other amusement or entertainment;

(21) "wages" means every remuneration, whether by way of salary, allowances, or otherwise expressed in terms of money or capable of being so expressed which would, if the term of employment, express or implied were fulfilled, be payable to an employee in respect of his employment or of work done in such employment, and includes:—

- (a) any remuneration payable under any settlement between the parties or order of a tribunal or court;
- (b) any remuneration to which the employee is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;
- (d) any sum which by reason of the termination of employment of the employee is payable under any law, contract or instrument which provides for the payment of such sums, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) any sum to which the employee is entitled under any scheme framed under any law for the time being in force;

but does not include:—

- i) any bonus, whether under a scheme of profit sharing or otherwise, which does not form part of the remuneration payable under the terms of employment, or, which is not payable under any award or settlement between the parties or order of a court;
- ii) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the Government;

- iii) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- iv) any travelling allowance or the value of any travelling concession;
- v) any sum paid to the employee to defray special expenses incurred by him on account of the nature of his employment, or
- vi) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

(22) "week" means a period of seven days beginning at midnight on Saturday;

(23) "young person" means a person who is not a child but has not completed eighteenth year.

3. Registration of Establishments and renewal of registration certificates.— (1) Within the period specified in sub-section (3), the employer of every establishment shall send to the Inspector concerned, a statement in the prescribed form together with such fees as may be prescribed, containing —

- (a) the name of the employer and the manager, if any;
- (b) the postal address of the establishment;
- (c) the name, if any, of the establishment; and
- (d) such other particulars as may be prescribed.

(2) On receipt of the statement and the fees, the Inspector shall, on being satisfied about the correctness of the statement, register the establishment in the Register of Establishments in such manner as may be prescribed and shall issue in the prescribed form a registration certificate to the employer who shall display it at a prominent place in the establishment.

(3) The period in respect of establishments mentioned in column (1) below for filing the statement and depositing the fees as required under sub-section (1), shall be as specified against it in column (2) —

Establishments (1)	Period (2)
(i) Establishments existing on the date on which this Act comes into force.	Thirty days from the date on which the Act comes into force.
(ii) New Establishments.	Thirty days from the date on which the establishment commences its work.

(4) The Inspector may, on receipt of an application made by the employer together with the fees prescribed therefor, renew the registration certificate for a period of one year commencing from the date of its expiry.

(5) Every application for the renewal of the registration certificate shall be made in such form and in such manner as may be prescribed so as to reach the Inspector not later than thirty days before the date of its expiry:

Provided that an application for the renewal of a registration certificate received not later than thirty days after its expiry may be entertained by the Ins-

pector on the applicant paying such penalty, not exceeding twenty-five rupees, as may be prescribed.

(6) An applicant for the renewal of a registration certificate under sub-section (5), shall, until communication of orders on his application, be entitled to act as if the registration certificate had been renewed.

CHAPTER II

Shops

4. Opening and closing hours of shops.— (1) No shop shall on any day be opened earlier or closed later than such hours as may, after previous notification be fixed by the Government by a general or special order in that behalf;

Provided that any customer who was being served or was waiting to be served in any shop at the hour fixed for its closing may be served during a quarter of an hour immediately following such hour.

(2) The Government may, for the purpose of this section, fix different hours for different classes of shops or for different areas or for different times of the year.

5. Daily and weekly hours of work in shops and prohibition of sales in its vicinity.— (1) Subject to other provisions of this Act, no employee in any shop shall be required or allowed to work therein for more than eight hours in any day and forty-eight hours in any week.

(2) Any employee may be required or allowed to work in a shop for any period in excess of the limit fixed under sub-section (1), on payment of over-time wages, subject however that the maximum period of such excess in a week shall be six hours.

(3) For the purpose of stock-taking and preparation of accounts, an employer may, with the previous intimation to the Inspector, require or allow any employee to work in a shop for not more than any six days in a year, in excess of the period fixed in sub-section (1), on payment of over-time wages, so however that the excess period shall not in aggregate, exceed twenty-four hours.

(4) No person shall carry on, in or adjacent to, a street or public place, the sale of any goods before the opening and after the closing hours fixed under section 4 for the shops dealing in any kind of goods in the locality in which such street or public place is situated:

Provided that nothing in this section shall apply to the sale of —

- (i) Newspapers,
- (ii) Flowers,
- (iii) Pan,
- (iv) Vegetables and fruits, and
- (v) such other goods as the Government may, from time to time, by notification, specify.

6. Interval for rest.— No employee in any shop shall be required or allowed to work therein for more than five hours in any day unless he has had an interval for rest of at least one hour.

Provided that an employee who was serving a customer at the commencement of the interval may be required to serve him during the quarter of an hour immediately following such commencement.

7. Spread over of period of work. — The periods of work of an employee in a shop shall be so arranged that, along with his intervals for rest, they shall not spread over more than twelve hours in any day: provided that where an employee works on any day for the purpose of stock-taking and preparation of accounts, the spread over shall not exceed fourteen hours in any such day, on payment of over-time wages.

8. Closing of shops and grant of holidays. — (1) Every shop shall remain closed on one day of the week. The employer shall fix such day at the beginning of the year, notify it to the Inspector and specify it on a notice prominently displayed in a conspicuous place in the shop provided that employer shall not alter such date more often than once in three months, shall notify the alteration to the Inspector, and shall also make the necessary change in the notice displayed in the shop.

(2) The Government may, by notification, require in respect of any specified class of shops that they shall, in addition to the weekly holiday prescribed under sub-section (1) be closed at such hour in the afternoon of one week day in every week as may be fixed by the Government.

(3) The Government may, for the purpose of sub-section (2), fix different hours for different classes of shops or for different areas or for different times of the year.

(4) The weekly day on which a shop is closed in pursuance of the requirement under sub-section (2) shall be notified to the Inspector and specified by the employer in a notice prominently displayed in a conspicuous place in the shop, and shall not be altered by the employer more often than once in three months.

(5) It shall not be lawful for the employer to call an employee at or for the employee to go to the shop in which he is employed or to any other place for any work in connection with the business of his shop on the weekly closed day or part of the day on which it has remained closed.

(6) No deduction shall be made from the wages of any employee in a shop on account of the weekly holiday or part of a day on which it has remained closed; and if such employee is employed on the basis that he would not ordinarily receive wages for such day or part of a day, he shall none the less be paid for such day or part of a day the wages he would have drawn had the shop not remained closed or the holiday not been allowed on that day or part of a day.

CHAPTER III

Establishments other than shops

9. Application of this Chapter to establishments other than shops. — The provisions of this Chapter shall apply only to establishments other than shops.

10. Opening and closing hours. — (1) No establishment shall on any day be opened earlier or closed later than such hour as the Government may, after previous publication in the Official Gazette, by general or special order specify in that behalf:

Provided that in the case of a restaurant or eating house, any customer who was being served or was waiting to be served therein at the hour fixed for its

closing may be served during the quarter of an hour immediately following such hour.

(2) The Government may, for the purposes of this section fix different hours for different classes of establishments or for different areas or for different times of the year.

11. Daily and weekly hours of work in establishment. — (1) Subject to other provisions of this Act, no employee in any establishment shall be required or allowed to work therein for more than eight hours in any day and forty-eight hours in any week.

(2) Any employee may be required or allowed to work in an establishment for any period in excess of the limit fixed under sub-section (1), on payment of over-time wages, so however that the maximum period of such excess shall be six hours in any week.

(3) For the purposes of stock-taking and preparation of accounts, an employer may, with the previous intimation to the Inspector, require or allow any employee to work in an establishment for not more than any six days in a year, in excess of the period fixed in sub-section (1), on payment of over-time wages, so however that the excess period shall not, in aggregate, exceed twenty-four hours.

12. Interval for rest. — No employee in any establishment shall be required or allowed to work in such establishment for more than five hours in any day unless he has had an interval for rest of at least one hour.

13. Spread over of periods of work. — The periods of work of an employee in an establishment shall be so arranged that, along with his interval for rest, they shall not spread over more than twelve hours in any day:

Provided that where an employee works on any day for the purpose of stock-taking and preparation of accounts, the spread over shall not exceed fourteen hours in any such day on payment of over-time wages.

14. Holidays. — (1) Every employee in an establishment shall be allowed in each week a holiday of one whole day;

Provided that nothing in this sub-section shall apply to an employee whose total period of employment in the week including the days spent on authorised leave is less than six days.

(2) The Government may, by notification, require in respect of any specified class of establishments that every employee therein shall be allowed in each week an additional holiday of one half-day commencing at such hour in the afternoon as may be fixed by the Government.

(3) The Government may, for the purpose of sub-section (2), fix different hours for different classes of establishments or for different areas or for different times of the year.

(4) No deduction shall be made from the wages of any employee in an establishment on account of any day or part of a day on which a holiday has been allowed in accordance with this section; and if such employee is employed on the basis that he would not ordinarily receive wages for such day or part of a day, he shall none the less be paid for such day or

part of a day the wages he would have drawn, had the holiday not been allowed on that day or part of a day.

(5) It shall not be lawful for the employer to call an employee at or for the employee to go to, his establishment on any day or part of a day on which a holiday has been allowed in accordance with this section.

CHAPTER IV

Employment of children and young persons

15. Children not to work in establishment.—No child shall be required or allowed to work in any establishment.

16. Young persons to work only between 6 a. m. and 7 p. m.—No young person shall be required or allowed to work in any establishment before 6 a. m. and after 7 p. m.

17. Daily and weekly hours of work for young persons.—Notwithstanding anything contained in this Act, no young persons shall be required or allowed to work in any establishment for more than seven hours in any day and forty-two hours in any week nor shall such person be allowed to work overtime.

18. Maternity leave.—The periods of absence from duty in respect of which a woman employee is entitled to maternity benefit under section 19, shall be treated as authorised absence from duty, and the woman employee shall be entitled to maternity benefit, but not to any wages for any of those periods.

19. Maternity benefit.—Every woman who has been for a period of not less than six months preceding the date of her delivery, in continuous employment of the same employer whether in the same or different shops or commercial establishments, shall be entitled to receive from her employer for the period of,

- (a) six weeks immediately preceding the day of delivery and
- (b) six weeks following the day of delivery; such maternity benefit and in such manner as may be prescribed;

Provided that no woman employee shall be entitled to receive such benefit for any day during any of the aforesaid periods, on which she attends work and receive wages therefor.

CHAPTER V

Health & Safety

20. Cleanliness.—The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed.

21. Ventilation.—The premises of every establishment shall be ventilated as provided for in the laws relating to the municipalities, gram panchayats or other local authorities in force in the Union territory.

22. Precautions for the safety of employees in establishments.—(1) In every establishment, other than such establishment or class of establishments as the Government may by notification specify all

precautions against fire shall be taken as may be prescribed.

(2) If power-driven machinery is used, or any process, which, in the opinion of the Government, is likely to expose any employee to a serious risk of bodily injury is carried on, in any establishment other than such establishment or class of establishments as the Government may, by notification, specify such precautions including the keeping of first aid box shall be taken by the employer for the safety of the employees therein, as may be prescribed.

CHAPTER VI

Leave and Holidays with wages

23. Leave.—(1) Every employee who has served for a period of two hundred and forty days or more during a continuous period of twelve months in any establishment shall be entitled during the subsequent period of twelve months, to leave with wages for a period of fifteen days;

Provided that such leave with wages may be accumulated upto a maximum period of forty-five days:

Provided further that any continuous period of service in an establishment preceding the date on which this Act applies to that establishment shall also count, subject to a maximum period of twelve months:

Provided also that any leave accumulated by an employee in an establishment under the law applicable to that establishment preceding the date on which this Act applies to it, shall not be affected.

(2) An employee may apply in writing to the employer, not less than seven full working days before the date of availing himself of his leave, to allow all the leave or any portion thereof, to which he is entitled under sub-section (1);

Provided that the number of instalments for taking leave shall not exceed three during a period of twelve months.

(3) An employee who has been allowed leave for not less than five days under sub-section (2) shall, before his leave begins, be paid the wages due for the period of the leave allowed if he makes a request therefor.

(4) Every employee in any establishment shall also be entitled during his first twelve months of continuous service and during every subsequent twelve months of such service—

- (a) to leave with wages for a period not exceeding twelve days, on the ground of any sickness incurred or accident sustained by him and; and
- (b) to casual leave with wages for a period not exceeding twelve days on any reasonable ground.

(5) If an employee entitled to any leave under sub-section (1), is discharged by his employer before he has been allowed such leave, or if the leave applied for by such employee has been refused and if he quits his employment before he has been allowed the leave, the employer shall pay him the amount payable under this Act in respect of the period of leave.

(6) If an employee is lawfully discharged by his employer when he is sick or suffering from the result

of an accident, the employer shall pay him the amount payable under this Act in respect of the period of the leave to which he was entitled at the time of his discharge in addition to the amount, if any, payable to him under sub-section (3).

(7) An employee in a hostel attached to a school or college or in an establishment maintained in connection with the boarding and lodging of pupils and resident masters, shall be allowed the privileges referred to in sub-sections (1) to (6), reduced however proportionately to the period for which he was employed continuously in the previous year or to the period for which he will be employed continuously in the current year, as the case be; and all references to the period of leave in sub-sections (1) and (4) shall be construed accordingly, fractions of less than half a day being disregarded.

24. Other holidays. — (1) Every employee in any establishment shall also be entitled to seven holidays in a year with wages on the days to be specified by notification from time to time by the Government which shall include the 26th January (Republic Day), 15th August (Independence Day), 2nd October (Gandhi Jayanti) and 19th December (Liberation Day) and 25th December (Christmas); and on every such holiday, the establishment should remain closed:

Provided that any such employee in any residential hostel, restaurant, eating house, theatre, or any place of public amusement or entertainment may be required to work in such establishment on any such holiday subject to the condition that in lieu thereof, a compensatory holiday with wages shall be allowed to such person within thirty days from the date of such holiday:

Provided further that such compensatory holidays shall not exceed seven in a year and where any such employee in any such establishment is required to work on any such compensatory holiday, he shall be paid additional wages at the ordinary rate of wages in lieu of such holidays.

(2) Nothing in sub-section (i) shall apply in respect of any establishment where the number of holidays with wages allowed by the employer is more than the holidays notified by the Government under that sub-section:

Provided that every such employer shall send a list of holidays with wages allowed by him, which shall include the four holidays specified in sub-section (1), to the Inspector and shall also display the list at a prominent place of the establishment.

25. Pay during leave and holidays. — Every employee shall, for the period of the leave allowed under sub-sections (1) and (4) of section 23 or the holidays allowed under section 24, be paid at a rate equivalent to the daily average of his wages for the days on which actually worked during the preceding month exclusive of any earnings in respect of overtime.

26. Power to increase the period of leave allowable under section 23. — Notwithstanding anything contained in section 23, the Government may, by notification, increase the total number of days of leave that may be allowed under sub-section (1) of that section and the maximum number of days upto which such leave may be accumulated in respect of any establishment or class of establishments.

CHAPTER VII

Wages

27. Responsibility for payment of wages. — Every employer shall be responsible for payment to his employees of all wages and sums required to be paid under this Act.

28. Fixation of wage-period. — (1) Every employer shall fix periods (hereinafter referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

29. Wages for overtime work. — Where any employee in any establishment is required to work overtime he shall be entitled, in respect of such overtime work, to wages at twice the ordinary rate of wages:

Provided that where the normal hours of work in an establishment are ordinarily less than eight hours a day and forty-eight hours a week, he shall be entitled in respect of work in excess of such normal hours upto eight hours a day, and forty-eight hours a week to wages at the ordinary rate of wages and in respect of work in excess of eight hours a day and forty-eight hours a week at twice the ordinary rate of wages, in addition to the wages for the normal hours of work.

Explanation: For the purpose of this section, the expression "ordinary rate of wages" shall mean such rate of wages as may be calculated in the manner prescribed.

30. Time for payment of wages. — (1) The wages of every employee shall be paid before the expiry of the fifth day after the last day of the wage-period in respect of which the wages are payable.

(2) Where the service of any employee is terminated by or on behalf of the employer, the wages earned by such employee shall be paid before the expiration of the second working day from the day on which his employment is terminated.

(3) The Government may, by general or special order, and for reasons stated therein exempt an employer from the operation of this section in respect of the wages of any employee or class of employees to such extent and subject to such conditions as may be specified in the order.

(4) All payments of wages shall be made on a working day.

31. Wages to be paid in current coin or currency notes. — All wages shall be paid in current coin or currency notes or in both.

32. Deductions which may be made from wages. — The wages of an employee shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation: Every payment made by an employer to the employee shall, for the purpose of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employee shall be made only in accordance with the provisions

of this Act, and may be of the following kinds only, namely: —

- (a) fines and other penalties lawfully imposed;
- (b) deductions for absence from duty;
- (c) deductions for damages to, or loss of, goods expressly entrusted to the employee for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- (d) deduction for house accommodation provided by the employer;
- (e) deduction for such amenities and services supplied by the employer as the Government may, by general or special order, authorise;
- (f) deductions for recovery of advances or for adjustment of overpayments of wages;
- (g) deductions of income-tax or profession tax payable by the employee;
- (h) deductions required to be made by order of a court or other authority competent to make such order;
- (i) deductions for subscriptions to, and for repayment of advances from, any provident fund to which the Employees Provident Funds Act, 1952 (Central Act, 19 of 1952) applies or any recognised provident fund as defined in section 2(38) of the Income Tax Act, 1961, (Central Act, 43 of 1961) or any provident fund approved in this behalf by the Government during the continuance of such approval;
- (j) deductions for payments to cooperative societies approved in this behalf by the Government or any officer authorised by them in this behalf or to a scheme of Insurance maintained by the Indian Post Office or the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956; (Central Act, 31 of 1956).
- (k) deductions made with the written authorisation of the employee in furtherance of any saving scheme approved by the Government or the purchase of securities of the Central or a State Government.

33. Fines. — (1) No fine shall be imposed on any employee save in respect of such acts and omissions on his part as the employer, with the previous approval of the Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner in the premises in which the employment is carried on.

(3) No fine shall be imposed on any employee until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three paise in the rupee of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employee who has not completed the age of fifteen years.

(6) No fine imposed on any employee shall be recovered from him after the expiration of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the employees in the establishment as are approved by the prescribed authority.

Explanation: — When the employees are only part of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

34. Deductions for absence from duty. — (1) Deductions may be made under clause (b) of sub-section (2) of section 32 only on account of the absence of an employee from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employee in respect of the wage-period for which the deduction is made, a larger proportion than the period for which he was absent bears to the total period, within such wage-period during which by the terms of his employment, he was required to work;

Provided that, subject to any rules made in this behalf by the Government, if ten or more employees acting in concert absent themselves without due notice that is to say, without giving the notice which is required under the terms of their contract of employment and without reasonable cause such deduction from any such employee may include such amount not exceeding his wages for four days as may by any such terms be due to the employer in lieu of due notice.

Explanation: For the purpose of this section, an employee shall be deemed to be absent from the place where he is required to work, if, although present in such place he refuses, in pursuance of a stay in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

35. Deductions for damage or loss. — (1) A deduction under clause (c) of sub-section (2) of section 32 shall not exceed in respect of the damage of goods, one half of the amount of such damage, and in respect of the loss of goods or money, the amount of such loss caused to the employer by negligence or default of the employee and shall not be made until the employee has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deduction.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed.

36. Deductions for services rendered. — A deduction under clause (d) or clause (e) of sub-section (2) of section 32 shall not be made from the wages of an employee unless the house accommodation, amenity or service has been accepted by him as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and in the case of a deduction under the said clause (e) it shall be subject to such conditions, as the Government may impose.

37. Deductions for recovery of advances. — Deductions under clause (f) of sub-section (2) of section 32 shall be subject to the following conditions, namely: —

- (a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling expenses;
- (b) recovery of advances of wages not already earned shall be subject to any rules made by the Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

38. Deductions for payment to co-operative societies and insurance schemes, etc. — Deductions under clause (j) and clause (k) of sub-section (2) of section 32 shall be subject to such conditions as the Government may impose.

39. Conditions for terminating the services of an employee and payment of gratuity. — (1) No employer shall without a reasonable cause and except for misconduct, terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee, at least one month's notice in writing or wages in lieu thereof and a gratuity amounting to fifteen days' average wages for each year of continuous employment.

Explanation: — For the purpose of this sub-section:

- (a) the expression "wages" does not include over time wages.
- (b) the expression "wages" means the daily average of wages for the days an employee actually worked during the thirty days immediately preceding the date of termination of service: —
- (c) an employee in an establishment shall be deemed to have been in continuous employment for a period of not less than six months, if he has worked for not less than one hundred and twenty days in that establishment within a period of six months immediately preceding the date of termination of the service of that employee;
- (d) where the total continuous employment is for a fraction of a year or extends over a fraction of a year in addition to one or more completed years of continuous employment, such fraction, if it is not less than half a year shall be counted as a year of continuous employment in calculating the total number of years for which the gratuity is to be given.

nuous employment in calculating the total number of years for which the gratuity is to be given.

(2) Where a gratuity is payable under sub-section (1) to an employee, he shall be entitled to receive his wages from the date of termination of his service until the date on which the gratuity so payable is actually paid subject to a maximum of wages for two months.

(3) An employee, who has completed the age of sixty years or who is physically or mentally unfit having been so declared by a medical certificate or who wants to retire on medical grounds or to resign his service, may give up his employment after giving to his employer notice of at least one month in the case of an employee of sixty years of age, and fifteen days in any other case; and every such employee and the dependent of an employee who dies while in service, shall be entitled to receive a gratuity amounting to fifteen days' average wages for each year of continuous employment calculated in the manner provided in the Explanation to sub-section (1). He shall be entitled to receive the wages from the date of giving up the employment until the date on which the gratuity so payable is actually paid, subject to a maximum of wages for two months.

(4) The services of an employee shall not be terminated for misconduct except, for such acts or omissions and in such manner, as may be prescribed.

Explanation: For the purpose of this section, the term "employee" shall include part-time employee also.

40. Appointment of authority to hear and decide appeals arising out of termination of services. —

(1) (a) The Government may, by notification, appoint an authority to hear and decide appeals arising out of the termination of service of employees under section 39.

(b) Any employee whose service has been terminated may appeal to the authority concerned within such time and in such manner as may be prescribed.

(2) The authority may, after inquiring in the prescribed manner, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) Against any decision of the authority under sub-section (2), a second appeal shall lie to the Labour Court constituted under section 7 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) within thirty days from the date of communication of the decision and the decision of the Labour Court on such appeal shall be final and binding on both the employer and the employee and shall be given effect to within such time as may be specified in the order of that Court.

(4) Any amount directed to be paid under this section may be recovered —

- (a) if the authority is a Magistrate, by the authority, as if it were a fine imposed by him as Magistrate; and
- (b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes

application in this behalf, as if it were a fine imposed by such Magistrate.

41. Notice and payment of gratuity to employees in case of transfer of establishment.—Where the ownership or management of an establishment is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment to a new employer, every employee who has been in continuous employment for not less than six months in that establishment immediately before such transfer, shall be entitled to the notice and the gratuity in accordance with the provisions of sub-section (1) of section 39.

Provided that nothing in this section shall apply to an employee in any case where there has been a change of employers by reason of transfer, if—

- (a) the employment of the employee has not been interrupted by such transfer;
- (b) the terms and conditions of employment applicable to the employee after such transfer are not in any way less favourable to the employee than those applicable to him immediately before such transfer; and
- (c) the new employer is under the terms of such transfer or otherwise, legally liable to pay to the employee in the event of termination of his services, gratuity on the basis that his employment has been continuous and has not been interrupted by the transfer.

CHAPTER VIII

Appointment, power and duties, etc. of the authority to hear and decide claims relating to wages, etc. of employees in establishments

42. Appointment of the authority to hear and decide claims arising out of deductions from the employees etc.—For any specified area the Government may, in consultation with the Judicial Commissioner, appoint, by notification, any Civil Judge (hereinafter to be referred to as the judicial authority) to hear and decide all claims arising out of deductions from the wages or delay in payment of the wages of gratuity payable under this Act to employees in any establishment in that area.

43. Claims arising out of deductions from wages or delay in payment of wages, etc. and penalty for malicious or vexatious claims.—(1) Where, contrary to the provisions of this Act, any deduction has been made from the wages of an employee in an establishment or any payment of wages or gratuity to him has been delayed, such employee himself, or if he is dead any of his dependents, or any legal practitioner, or any official of a registered trade union authorised in writing to act on behalf of such employee or dependent, or any Inspector under this Act, or any other person acting with the prior permission of the prescribed authority may apply to the judicial authority for a direction under sub-section (2):

Provided that every such application shall be presented within one year from the date on which the deduction from the wages was made or from the date on which the payment of the wages or gratuity was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of one year when the

applicant satisfies the judicial authority that he had sufficient cause for not making the application within such period.

(2) When any application under sub-section (1) is entertained, the judicial authority shall, hear the applicant and the employer or give them an opportunity of making representation either in person or through an authorised representative, and after such further inquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer is liable under this Act, direct the refund to the employee, of the amount deducted, or the payment of the delayed wages or the gratuity together with the payment of such compensation as that authority may think fit, not exceeding ten times the amount deducted or the amount of delayed wages and not exceeding twenty five rupees in case of gratuity:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages or gratuity if the said authority is satisfied that the delay was due to—

- (a) a bonafide error or a bonafide dispute as to the amount payable to the employee, or
- (b) the existence of exceptional circumstances, such that the employer was unable, though exercising reasonable diligence to make prompt payment, or
- (c) the failure of the employee to accept payment.

(3) If the said authority hearing any application under this section is satisfied that it was either malicious or vexatious, that authority may direct that a penalty not exceeding five rupees be paid to the employer by the person presenting the application.

(4) Any amount directed to be paid under this section may be recovered—

- (a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate; and
- (b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes an application in this behalf, as if it were a fine imposed by such Magistrate.

Explanation.—For the purpose of this section, the term “employee” shall include part-time employee also.

44. Single application in respect of claims from unpaid group.—(1) Employees are said to belong to the same unpaid group if they are borne on the same establishment and if their wages or gratuity for the same period or periods have remained unpaid after the day on which those were due.

(2) A single application may be presented under section 43 on behalf, or in respect, of any number of employees belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (2) of that section shall be twenty five rupees per head.

(3) The Judicial authority may deal with any number of separate pending applications, presented under section 43, in respect of persons belonging to the same unpaid group, as if it were single application presented under sub-section (2) of this section, and

the provisions of that sub-section shall apply accordingly.

45. Appeal. — (1) An appeal against an order dismissing either wholly or in part an application made under sub-section (1) of section 43 or against a direction made under sub-section (2) or sub-section (3) of that section may be preferred before the District Court within thirty days of the date on which the order or direction was served on the applicant or the employer, as the case may be —

- (a) by the employer, if the total sum directed to be paid by way of wages, gratuity and compensation exceeds three hundred rupees, or
- (b) by the person who had applied under sub-section (1) of Section 43 if the total amount of wages or gratuity claimed to have been withheld from the employee or from the unpaid group to which he belonged exceeds fifty rupees, or
- (c) by any person directed to pay a penalty under sub-section (2) of section 43.

(2) Save as provided in sub-section (1) any order dismissing either wholly or in part an application made under sub-section (1) of section 43 or a direction made under sub-section (2) or sub-section (3) of that section shall be final.

46. Conditional attachment of property of employer. — (1) Where at any time after an application has been made under sub-section (1) of Section 43, the authority, or where at any time after an appeal has been filed under clause (b) of sub-section (1) of section 45, the Court referred to in that section, is satisfied that the employer is likely to evade payment of any amount that may be directed to be paid under section 43 or section 45, the authority or the Court, as the case may be, except in cases where the authority or Court is of opinion that the ends of justice would be defeated by the delay, after giving the employer an opportunity of making representation, may direct the attachment of so much of the property of the employer as is, in the opinion of the authority or Court, sufficient to satisfy the amount which may be payable under the direction.

(2) The provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) relating to attachment before judgement under that Code shall, so far as may be, apply to any direction for attachment under sub-section (1).

47. Powers of authority appointed under section 42. — Every authority appointed under section 42 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898).

48. Powers of Government to prescribe costs and court-fees for proceedings under this chapter. — The Government may prescribe the scales of cost which may be allowed and the amount of court-fees which shall be payable, in respect of any proceedings under this Chapter.

CHAPTER IX

Appointment, power and duties of Inspectors

49. Appointment of Inspectors. — The Government may by notification, appoint such number of Inspectors as it may think necessary for the purposes of this Act and fix the local limits of their jurisdiction.

50. Powers and duties of Inspectors. — An Inspector may, within the local limits for which he is appointed,

- (a) enter at all reasonable hours with the assistance of such persons in the service of the Government or any local authority as he thinks fit, any place which is or which he has reason to believe, is used as an establishment;
- (b) make such inspection of the premises and of any registers or other records and take on the spot or otherwise evidence of such persons, as he may deem necessary, in the manner prescribed;
- (c) exercise such other powers as may be necessary for carrying out the purposes of this Act.

51. Inspectors to be public servants. — Every Inspector appointed under section 49 (Central Act 45 of 1869) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

CHAPTER X

Penalties for Offences

52. Penalties. — Any employer who contravenes any of the provisions of sections 4, 5 to 8, 10 to 25, 27 to 39, 41 and 57 shall be punishable for a first offence with fine which may extend to twenty five rupees, for a second offence with fine which shall not be less than fifty rupees and which may extend to one hundred rupees, and for a third or subsequent offence with fine which shall not be less than one hundred rupees and which may extend to two hundred and fifty rupees.

Provided that where any employer fails to possess a valid certificate of registration in contravention of the provisions of section 3 or of the rules made thereunder, he shall, on conviction, be punishable, in the case of a continuing offence, with a further fine which may extend to ten rupees for each day during which the offence continues.

53. Penalty for obstructing Inspector, etc. — Any person who wilfully obstructs an Inspector in the exercise of any power conferred on him under this Act, or any person lawfully assisting such Inspector in the exercise of such power, or who fails to comply with any lawful direction made by such Inspector, shall be punishable with fine which may extend to two hundred and fifty rupees.

54. Procedure in trial of offence. — (1) No Court shall take cognizance of a complaint against an employer under section 43 relating to deductions from wages or delay in payment of wages or gratuity payable under this Act to an employee, unless an application in respect of the facts constituting the offence has been presented under section 43 and has been granted wholly or in part and the au-

thority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against the employer for such an offence, the authority empowered under section 42 or the appellate Court, as the case may be, shall give such employer an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such employer satisfies the authority or Court that his default was due to —

- (a) a bonafide error or bonafide dispute as to the amount payable to the employee; or
- (b) the existence of exceptional circumstances, such that the employer was unable, though exercising diligence, to make prompt payment; or
- (c) the failure of the employee to accept payment.

(3) No Court shall take cognizance of a complaint against any person for an offence under section 43 other than the offence referred to in sub-section (1) or for a contravention of any rule made under section 59 except on a complaint made by or with the previous sanction in writing of an Inspector under this Act within six months from the date on which the offence or contravention is alleged to have been committed.

(4) In imposing any fine for an offence referred to in sub-section (1), the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 43.

55. Bar of suits. — No Court shall entertain any suit for the recovery of wages or gratuity or of any deduction therefrom in so far as the sum so claimed: —

- (a) forms the subject of an application under section 43 which has been presented by the plaintiff and which is pending before the authority appointed under section 42 or of an appeal under section 45; or
- (b) has formed the subject or a direction under section 43 in favour of the plaintiff; or
- (c) has been adjudged, in any proceeding under section 43 not to be owed to the plaintiff; or
- (d) could have been recovered by an application under section 43.

56. Contracting out. — Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

CHAPTER XI

Miscellaneous

57. Restriction on double employment, maintenance of registers and records. — (1) No employee shall work in any establishment, nor shall any employer knowingly permit an employee to work in any establishment, on a day or part of a day on which the employee is given a holiday or is on leave in accordance with the provisions of this Act.

(2) Subject to the control of the Government, an employer shall maintain such registers and records and display such notices, as may be prescribed. All such registers and records shall be kept, and all such notices shall be displayed on the premises of the establishment to which they relate.

(3) Every employer shall on demand produce or cause to be produced for inspection by an Inspector all registers, records and notices required to be kept by or under this Act.

(4) Every employer shall submit such returns relating to his business, in such manner and within such period, and to such authority as may be prescribed.

(5) Every employer shall give an order of appointment to his employee in the establishment before such employee joins the service:

Provided that in the case of an employee in the service at the commencement of this Act, the employer shall give such order of appointment within a period of three months from the date of such commencement.

58. Delegation of powers. — (1) The Government may, by notification, authorise any officer or authority subordinate to them, to exercise any one or more of the powers vested in them by or under this Act, except the power mentioned in section 59, subject to such restrictions and conditions, if any, as may be specified in the notification.

(2) The exercise of the powers delegated under sub-section (1) shall be subject to control and revision by the Government or by such persons as may be empowered by them in that behalf. The Government shall also have power to control and revise the acts or proceedings of any persons so empowered.

59. Power to make rules. — (1) The Government may make rules for carrying out the purposes of this Act.

(2) In making a rule under sub-section (1), the Government may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(3) The power to make rules conferred by this section shall be subject to the conditions of the rules being made after previous publication.

(4) Every rule made under this Act shall, immediately after it is made, be laid before the Legislative Assembly of Goa, Daman and Diu if it is in session and if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiration of the session in which it is so laid or the session immediately following, the Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall thereafter have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

60. Right and privilege under other law, etc. not affected. — Nothing in this Act shall affect any rights, privileges which any employee in any establishment is entitled to, on the date on which this Act comes into operation in respect of such

establishment, under any other law, contract, custom or usage applicable to such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

61. Exemptions.—(1) Nothing in this Act shall apply to —

- (a) employees in any establishments in a position of management and having control over the affairs of the establishment and whose average monthly wages exceed five hundred rupees;
- (b) establishments under the Central and State Governments, local authorities, cantonment authorities, the Reserve Bank of India, a railway administration operating any railway as defined in clause (20) of article 366 of the Constitution;
- (c) establishments in mines and oil fields;
- (d) establishments in bazaar or in places where fairs or festivals are held temporarily for a period not exceeding one month at a time.

(2) Nothing in section 4 or section 10, as the case be, shall apply to —

- (a) hospitals and other institutions for treatment or care of the sick, the infirm, destitute or the mentally unfit;
- (b) such chemists' or druggists' shops as the Government may, by general or special order, specify;
- (c) hair-dressing shops, clubs and residential hotels, educational institutions, hostels attached to schools or colleges, and establishments maintained in connection with the boarding and lodging of pupils and resident masters;
- (d) stalls and refreshment rooms at railway stations, docks, wharves, ports, airports or bus stands;
- (e) establishments wholly or principally engaged in the sale of ice or aerated water;
- (f) establishments wholly or principally engaged in the sale of funeral requisites.

(3) Nothing in sections 4, 5, 8 or 10 shall apply to —

- (a) persons whose work is of an intermittent nature such as caretaker, sweeper, travelling staff;
- (b) persons employed for loading and unloading goods at godowns.

(4) The Government may, by notification, exempt either permanently or for any specified period, any establishment or class of establishments, or persons or classes of persons, from all or any of the provisions of this Act, subject to such condition as they may deem fit.

(5) Notwithstanding anything contained in the foregoing sub-sections, the Government, may, by notification, apply all or any of the provisions of this Act to any class of persons or establishments mentioned in those sub-sections other than those mentioned in clause (b) of sub-section (1) and modify or cancel any such notification.

62. Appointment of an authority to decide certain questions.—(1) If any question arises whether all or any of the provisions of this Act apply to an establishment or to an employee therein or whether section 61 applies to any case or not, it shall be decided by such authority as may be prescribed by the rules made under this Act.

(2) The decision of such authority shall be final and shall not be liable to be questioned in any Court of law.

63. Application of the Workmen's Compensation Act, 1923.—The provisions of the Workmen's Compensation Act, 1923, (Central Act 8 of 1923) and the rules made thereunder, shall so far as may be, apply to every employee to whom this Act applies.

64. Protection of persons acting under this Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

65. Power of Government to suspend provisions of the Act during fairs and festivals.—On any special occasion in connection with a fair or festival or a succession of public holidays, the Government may by notification, suspend for a specified period the operation of all or any of the provisions of this Act, subject to such conditions, as may be specified in such notification.

66. Weekly Holidays Act 1942 not to apply to establishments governed by this Act.—On and from the date on which this Act comes into operation in respect of any establishment, the Weekly Holidays Act, 1942 (Central Act 18 of 1942) shall cease to apply to such establishment.

67. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Government may, after previous publication, by order, take such action, not inconsistent with the purposes of this Act, as appear to them to be necessary or expedient for removing the difficulty.

68. Repeal and Savings.—With effect on and from the date on which this Act is brought into force, the Diploma Legislative no. 1441 dated 28th August, 1952 and the Diploma Legislative no. 1503 dated 3rd September, 1953, as in force in the territory shall stand repealed:

Provided that —

(a) every appointment, order, rule, notification or notice made, issued or given under the provisions of any of the Legislative Diplomas so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, issued or given under the provisions of this Act, unless and until superseded by any appointment, order, rule, notification or notice made, issued or given under this Act; and

(b) any proceedings relating to the trial of any offence punishable under the provisions of the Legislative Diplomas so repealed shall be continued and completed as if the said Legislative Diplomas had not been repealed

but had continued in operation and any penalty imposed on such proceeding shall be recovered under the Legislative Diplomas so repealed.

Statement of Objects and Reasons

The Shops and Establishments Act regulating the conditions of Service and matters connected therewith is in force in other States, but similar legislation has not been enacted in this Territory. There are a large number of shops and establishments in this territory employing about 35,000 persons whose service conditions remain unregulated under any other labour laws. Subsequently, such employees are not protected against long hours of work, irregular payment of wages, non-grant of leave and weekly holidays, etc.

The Goa, Daman and Diu (Shops and Establishments) Bill, 1973 aims at securing better conditions of service to employees of shops and commercial establishments in this territory and also to protect them from exploitation and unfair practices by their employers.

Financial Memorandum

Clause 49 of the Bill empowers the Government to appoint by notification such number of Inspectors as may be necessary for the purposes of the Act. In addition to this some clerical assistance will have to

be provided for the purposes of the Act. The annual expenditure on the enforcement of the Act will be about Rs. 90,000/-.

Delegated Legislature Memorandum

Clause 59 of the Bill empowers the Government to make rules to carry out the purposes of the Act. These powers are of a normal character providing only for the details of procedure for facilitating the working of this Act.

Panaji,
8th March, 1973

Assembly Hall,
Panaji,
9th March, 1973.

PRATAP SINGH RANE
Minister for Law & Labour

B. M. MASURKAR
Secretary to the Legislative
Assembly of Goa, Daman and Diu

Administrator's recommendation under Section 23 of the Government of Union Territories Act, 1963.

In pursuance of sub-section (3) of Section 23 of the Government of Union Territories Act, 1963, the Administrator of Goa, Daman and Diu has recommended to the Legislative Assembly of Goa, Daman and Diu the introduction and consideration of the Goa, Daman and Diu Shops and Establishments Bill, 1973.